

Memo:

To: Candice Briere, Chair; Members of the ZBA, Jon Barrett, Mia Gale

From: Wendy Carman, President of OHMHA

Date: 5/23/2022

Re: ZBA 22-2008; 3095 Cedarbrook Road

Background

I am the President of the Orchard Hills Maplewood Homeowners Association (OHMHA) and Cedarbrook is one of the streets in our neighborhood. We receive notice of variance requests within our boundaries. I am writing to you because there are long standing drainage issues in this community due to wetlands prevalent in the Northeast Area of Ann Arbor. Concerns about some of these drainage issues are associated with the Windemere Subdivision and were raised as long ago as when this property was being approved for development in 1987. These properties were developed before Green Road was built behind these Cedarbrook Homes. Some of the homes on this block have experienced drainage issues since then. The wetlands shown on page 4 of your packet are a hint for a possible source of drainage issues on Cedarbrook. The photo shows wetlands that still remain just north of Cedarbrook after the development was completed and after Green Rd was extended. The developers of the Windemere Subdivision were aware of the wetland conditions on their property because numerous discussions were held with the City, the developer, and representatives from OHMHA. In the end, approval of their plans was predicated on connecting their storm water to the west and not south on Georgetown. That stipulation and several others were later ignored.

OHMHA participated in discussions with City when Green Rd was extended, resulting in the construction berms behind the rear lot lines north of Cedarbrook to shield them from Green Rd, providing privacy and preventing the need for Cedarbrook residents to shovel the new sidewalk. This bermed and treed area is now part of the City's Park system

The Existing Lot and Structure.

The petitioner's house is a 2,853 sq ft home on a 7245 sq ft lot zoned R1C. The Windemere partnership sold this lot to the builder in January 1989 and the builder sold the house to its first occupants in 1992, who then sold it 1 year and 7 months later, and it was sold to the current owner in April 1996.

Staff has indicated that the existing house is non-conforming because it is 26' feet from the rear lot line rather than the required 30'. That means that at least some part of the existing house extends 4' into the required rear setback. Examining the provided survey does not allow us to determine the exact dimensions as there is no line indicating where the 30' required set back line would be. And since the Survey Map has been altered for the petition, it is difficult to determine where the setback line goes through the existing house. However, careful evaluation with a ruler suggests that a 30' line would be approximately where the sidewalk on the east side of the property ends. This suggests that the house, without considering either the window well or the bump out that includes the fireplace, was constructed a little more than 1.5' into the required rear setback. Then the 5.7' by 8.2' bump out extends beyond the allowed 2' extension for a fireplace maybe about 4' or a little less.

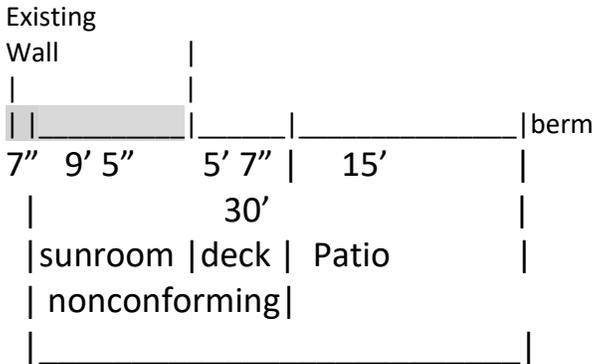
In addition, the survey shows how the existing deck would be altered in shape and size by the installation of the proposed sunroom as well as the brick patio in the north west corner of the lot

The Survey map in your packet shows a brick patio which appears to be taking up the depth of the 15' drainage easement. I have attached a picture of the petitioner's back yard. The fence that you can see in the photo was installed by the neighbor to the left of 3095 Cedarbrook. According to the Map of Survey the distance between the rear lot line and the wall of the new Sunroom would be 20' 7" and the patio constitutes 15 of those feet. This would mean that there will be 5' 7" of deck space before the wall of the proposed sunroom. Comparing the Map of Survey with the photo that I have provided does not seem to match exactly. The Map appears to show what will be after they finish construction

and not what is there now. In addition, the map does provide any data regarding the topography. The photo shows the parts of the berm outside of the rear lot line.

Notice that the photo shows a patio that is not necessarily brick and does not appear to be flat. It is not clear from the petition or the photo how much slope is involved in the patio or whether this whole section of the yard (deck and patio) is impermeable or not. The photo should give you an idea of where the sunroom would be and how much of the required open space would be devoted to impermeable surface. Although there is no record of a permit for the existing patio, neighbors think that this patio was installed in about 2009. At least two neighboring homes had to hire a company to lay drains in their yards to accommodate water that began to collect in their yards following the construction of the patio. Also, it should be noted that the survey shows that the patio encroaches into the yard of the neighbor to the left and onto the park property north of the owner’s lot.

It is difficult to determine in the picture just how far the sunroom will protrude into the yard or if the measurements provided are accurate. However, this schematic shows that Sunroom will take up 32% of the depth of the rear yard.



Petitioner’s Request

The staff report says that the petitioners are seeking a variance; “the requested variance is nine feet five inches to allow the sunroom to be 20 feet seven inches from the rear lot line” instead of the required 30’.

To get such a variance they must meet all 5 of the following standards:

a) That the practical difficulties are exceptional and peculiar to the property of the person requesting the variance and result from conditions which do not exist generally throughout the City.

UDC (5.29.13.C.2.) That the alleged practical difficulties are exceptional and peculiar to the property of the Person requesting the variance, and result from conditions that do not exist generally throughout the City.

The petitioner must show that there is a unique practical difficulty with the property. They have indicated the only difficulty is that the home is non-conforming because it intrudes into the required rear setback and therefore, they should get a variance to intrude more.

The lot on which this home was constructed is 63’ by 115’, a typical 7200 sq ft R1C lot on this street. There is nothing truly unique about the lot. The property has no unusual topography or shape or surrounding conditions. It and 9 other houses on this side of the street, back up to a strip of publicly owned treed land that separates their properties from the sidewalk on Green Rd. There are 28 homes in this small development and the deepest of these lots is 115 feet. In fact, 20 of the 28 homes are on lots 63’ by 115’. The 8 other lots, which are less deep, are located on the west end of the street mostly on a cul-de-sac. Of the homes on the straight part of the street, only 5 are larger and 14 are smaller than the home at 3095. The only practical difficulty for the petitioner is that the house takes up so much of the lot that to put on the addition they would like requires action by the ZBA.

b) That the practical difficulties will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.

UDC (5.29.13.C.3) That the alleged practical difficulties that will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.

Here the petitioner has repeated their contention that the practical difficulty is that the house was built too close to the rear lot line. However, this standard talks about how they will be hurt if they can't get the variance.

If the ZBA denies this request, the petitioner will not be able to build the sunroom as planned. But, is failure to have a sunroom more than a mere inconvenience? Do we believe that every home in Ann Arbor should be able to build a sunroom by right, even if that sunroom must be built mostly in the required rear setback? This nice, rather large, home of 2853 sq ft has existed and served successfully for 30 years without a sunroom. I can understand why they might now wish to have a sunroom, but not having a sunroom does not make their home unusable.

c) That allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Chapter, the individual hardships that will be suffered by a failure of the Board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.

UDC (5.29.13.C.4) That allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this chapter, the practical difficulties that will be suffered by a failure of the Board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.

The petitioners seem to misunderstand this standard. They say the variance will be good for them because it will allow them additional private living space in their rear yard. They do say in response to the last standard that they don't think their sunroom will create any sight line issues for the neighbors.

If you approve this request, you will not be granting them permission to have something they lack but that everyone else has. Instead, you will be granting them something that they would enjoy but that might negatively affect their neighbors by reducing the required open space expected on the property, making more of the lot impervious, increasing the potential for more flooding of neighbors' yards, and affecting the open view of neighbors.

d) That the conditions and circumstances on which the variance request is based shall not be a self-imposed hardship or practical difficulty.

UDC (5.29.13.C.5) That the conditions and circumstances on which the variance request is based are not a self-imposed practical difficulty.

The petitioner contends that this sunroom fits the home well and is only a 10' projection to give them practical use of the space being created and that the practical difficulty is not self-imposed.

The property was owned by the builder for nearly 4 years and the structure was constructed as it is today. It could have been built without the non-conformity, it could have been built smaller, and it could have been built with a sunroom

that met the setback requirements and a smaller kitchen. However, it was not. The practical difficulty with this structure was entirely self-imposed by the builder and that passes on with the ownership of the property to the current owner.

e) a variance approved shall be the minimum variance that will make possible a reasonable use of the land or structure.

UDC (5.29.13.C.6) The variance to be approved is the minimum variance that will make possible a reasonable use of the land or Structure.

Again, the petitioner has not really addressed this standard. Instead, they have reiterated that they don't think it will negatively affect their neighbors and all they want to do is, use part of their yard for a sunroom. It is probably true that the proposed sunroom would not be useable if it were much smaller in depth. That is, unless they were willing to use part of the current house as part of the sunroom. For example, could they change the interior of the house to allow a wall of windows that protrudes only very small distance into the yard, creating more light inside room? In any event, it is clear the current home, without the sunroom, already provides the owners with a more than reasonable use of the structure.

I suggest that this request for a variance should not be approved, not only because it doesn't meet any of the 5 standards, but because granting them a variance as proposed would make their house conforming and would then even allow them to increase the size of their exterior wall to make the whole house extend out to the have a 20' 7" rear setback.

I believe that the petitioners should be requesting that you to grant permission to alter a non-conforming structure (UDC 5.32.2) to allow a 10' by 16' sunroom, per submitted plans, that results in additional floor area being made fit for occupancy and increases the exterior dimensions of the building, encroaching into the required rear setback 9' 5" for 16'.

Theoretically, there could be two ways that such a request could be considered.

- 1) The alteration is to a residential property (R1C zoning) and the alteration conforms to all the requirements of the chapter.

That would require the sunroom itself to conform even though the structure was non-conforming. In this case the sunroom does not conform to the requirements because most of the additional space extends into the required rear setback and exacerbates the non-conformance of this structure. Therefore, this approach would not apply.

- 2) The alteration can be approved by the Zoning Board of Appeals upon a finding that the alteration complies as nearly as practicable with the requirements of the UDC and that it will not have a detrimental effect on the neighboring properties.

In my opinion, the discussion provided above regarding the requested variance, provides evidence that this request does not comply as nearly as practicable and could have a detrimental effect on neighboring properties.

However, if ZBA decides to approve this petition despite its failure to meet the standards, it is requested that the ZBA use its power to add conditions to their ruling as follows.

- 1) Provisions must be required to mitigate any water flowing from their property into neighbors' yards, whether created from the additional impervious area of a new sunroom or from the brick patio built in the drainage easement, or other structures on the property. This may mean that the patio must be removed from the drainage easement since it clearly has caused water to flow into the two properties to the east.
- 2) You might also want to require the petitioner to remove those portions of the patio that encroach into the western neighbor's property or into the parkland property behind the lot.

